

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

TruePosition, Inc.,)	
)	
Plaintiff/)	
Counterclaim-Defendant,)	
)	Civil Action No. 05-747-SLR
v.)	
)	
Andrew Corporation,)	
)	
Defendant/)	
Counterclaim-Plaintiff.)	
_____)	

**APPENDIX B TO TRUEPOSITION'S OPPOSITION TO ANDREW'S
POST-TRIAL BRIEF IN SUPPORT OF ITS REMAINING EQUITABLE
DEFENSES**

CONNOLLY BOVE LODGE & HUTZ LLP

James D. Heisman, Esq.
1007 N. Orange Street
P.O. Box 2207
Wilmington, DE 19899
Telephone: (302) 658-9141
Facsimile: (302) 658-5614

WOODCOCK WASHBURN LLP

Paul B. Milcetic, Esq. (pro hac vice)
Dale M. Heist, Esq. (pro hac vice)
Kathleen A. Milsark, Esq. (pro hac vice)
Amanda M. Kessel, Esq. (pro hac vice)
Daniel J. Goettle, Esq. (pro hac vice)
Cira Centre, 12th Floor, 2929 Arch Street
Philadelphia, PA 19104
Telephone: (215) 568-3100
Facsimile: (215) 568-3439

TABLE OF CONTENTS

**APPENDIX B TO TRUEPOSITION'S OPPOSITION TO ANDREW'S
POST-TRIAL BRIEF IN SUPPORT OF ITS REMAINING EQUITABLE
DEFENSES**

Court's e-mail to the parties regarding equitable issues	B1-B3
--	-------

From: Rosanna_Piccirilli@ded.uscourts.gov <Rosanna_Piccirilli@ded.uscourts.gov>
To: Lundgren, Andrew <alundgren@ycst.com>
CC: Jason Choy <JChoy@kirkland.com>; James Heisman <JHeisman@cblh.com>; Ingersoll, Josy <jingersoll@ycst.com>; Milsark, Kathleen A. (Woodcock Washburn); Michael Parks <mparks@kirkland.com>; slr_civil@ded.uscourts.gov <slr_civil@ded.uscourts.gov>
Sent: Wed Oct 17 16:48:28 2007
Subject: RE: TruePosition v. Andrew, C.A. No. 05-747-SLR

Counsel,

It is the Judge's recollection that there were two equitable issues that were going to be presented post-trial based on the factual record created at trial: equitable estoppel and implied license. If that is the case, the parties should follow the Judge's procedure for briefing following a bench trial, which procedure is posted on Her Honor's website. Please note that the Judge will expect one brief for both issues; the Judge does not want findings of fact and conclusions of law.

Sincerely,
Rosanna Piccirilli
Case Manager to Judge Robinson

NOTE: If this e-mail is offering available dates for a court proceeding, ONLY ONE counsel should be confirming the date via a reply to the slr_civil@ded.uscourts.gov e-mail address once a date has been agreed upon by ALL involved counsel.

Please note further, that if the court is offering possible dates for a discovery conference in response to counsel's email to resolve disputes, the requesting party will be responsible for the costs of the discovery conference SHOULD the disputes raised turn out to be frivolous, OR if counsel hasn't made a good faith effort to resolve them.

"Lundgren, Andrew" <alundgren@ycst.com>

10/16/2007 05:56 PM

To

<slr_civil@ded.uscourts.gov>

cc

"Ingersoll, Josy" <jingersoll@ycst.com>, "Michael Parks" <mparks@kirkland.com>, "Jason Choy" <JChoy@kirkland.com>, <kmilsark@woodcock.com>, "James Heisman" <JHeisman@cblh.com> Subject
RE: TruePosition v. Andrew, C.A. No. 05-747-SLR

Dear Judge Robinson:

Andrew disagrees with TruePosition's suggestion that these issues are being raised for the first time or that the Court need not decide the remaining equitable defenses (equitable estoppel, implied license, and unclean hands) just because the jury has decided other defenses.

Andrew's proposal relates to briefing these remaining equitable defenses, which have different elements and/or burdens of proof than the issues the jury decided, and which the Court directed at the pretrial conference would be issues for the Court to decide following trial.

Respectfully submitted,

Andrew A. Lundgren (No. 4429)

Andrew A. Lundgren
Young Conaway Stargatt & Taylor, LLP
The Brandywine Building
1000 West Street, 17th Floor
P.O. Box 391
Wilmington, DE 19899-0391
Phone: 302-571-6743
Facsimile: 302-576-3511
alundgren@ycst.com

-----Original Message-----

From: James Heisman [mailto:JHeisman@cblh.com]
Sent: Tuesday, October 16, 2007 2:24 PM
To: slr_civil@ded.uscourts.gov
Cc: Ingersoll, Josy; Michael Parks; Jason Choy; kmilsark@woodcock.com; Lundgren, Andrew
Subject: RE: TruePosition v. Andrew, C.A. No. 05-747-SLR

Dear Judge Robinson:

This email is in response to Andrew's request that the Court reconsider Andrew's equitable defenses and allow additional briefing concerning those defenses. The Court should reject that request.

A jury has rendered a verdict in favor of TruePosition, and against Andrew, on all counts, including factual findings that resolve both the legal and equitable issues between the parties. Based on those findings, the Court entered judgment in TruePosition's favor in the amount of \$45,300,000.00, and, since then, the Court has entered a briefing schedule that gives the parties a fair opportunity to brief any timely filed post-trial motions. The Court should not allow additional post-trial briefing that seeks to overturn the Court's judgment based upon "equitable" issues that Andrew has now raised for the first time after the expiration of the ten day post-judgment window for filing JMOLs. Nor does the Court need to reconsider the exercise of its equitable discretion in favor of Andrew, a party that the jury has found to have repeatedly acted inequitably.

Respectfully,
James D. Heisman (2746)
CONNOLLY BOVE LODGE & HUTZ LLP
1007 N. Orange Street
P. O. Box 2207
Wilmington, DE 19899
Tel: 302.888.6216
Fax: 302.252-4209
Email: jdh@cblhlaw.com

-----Original Message-----

From: Lundgren, Andrew [mailto:alundgren@ycst.com]
Sent: Monday, October 15, 2007 8:20 PM
To: slr_civil@ded.uscourts.gov

Cc: Ingersoll, Josy; Michael Parks; Jason Choy; kmilsark@woodcock.com; James Heisman
Subject: TruePosition v. Andrew, C.A. No. 05-747-SLR

Dear Judge Robinson:

On behalf of Defendant Andrew Corporation, I write with respect to the equitable issues that were tried to the Court in the captioned matter. By way of background, the Court decided at the pre-trial conference that these defenses -- equitable estoppel, implied license, and unclean hands -- would be heard by the Court. In its Order of October 12, 2007 (D.I. 320), the Court directed that Andrew file a 75-page opening brief in support of its eleven motions for judgment as a matter of law. To complete briefing on Andrew's post-trial matters, Andrew proposes that it also file a 40-page opening brief on its equitable defenses, along with proposed findings of fact and conclusions of law, in accordance with Local Rule 7.1.3. When contacted by Andrew about this matter, TruePosition refused to agree. Accordingly, Andrew respectfully seeks guidance from the Court on this issue.

Respectfully submitted,

Andrew A. Lundgren (No. 4429)

Andrew A. Lundgren
Young Conaway Stargatt & Taylor, LLP
The Brandywine Building
1000 West Street, 17th Floor
P.O. Box 391
Wilmington, DE 19899-0391
Phone: 302-571-6743
Facsimile: 302-576-3511
alundgren@ycst.com

This message may contain confidential attorney-client communications or other protected information. If you believe you are not an intended recipient (even if this message was sent to your e-mail address), you may not use, copy, or retransmit it. If you believe you received this message by mistake, please notify us by return e-mail, and then delete this message. Thank you for your cooperation.

This e-mail and any attachment is intended only for use by the addressee(s) and may contain privileged and confidential information. Please email or call 302-658-9141 to advise the sender of a transmission error and delete the message and any attachments and any printouts. Any tax advice contained in this communication is not intended and cannot be used to avoid penalties under the Internal Revenue Code or to promote, market or recommend to another party any transaction or matter addressed herein.

CERTIFICATE OF SERVICE

I, James D. Heisman, hereby certify that on this 30th day of November, 2007, I caused a true and correct copy of the foregoing **APPENDIX B TO TRUEPOSITION'S OPPOSITION TO ANDREW'S POST-TRIAL BRIEF IN SUPPORT OF ITS REMAINING EQUITABLE DEFENSES** to be served upon the following individuals in the manner indicated below:

Via hand-delivery

Josy W. Ingersoll, Esq.
Young Conaway Stargatt & Taylor, LLP
100 West Street, 17th Floor
Wilmington, DE 19801
jingersoll@ycst.com

Via e-mail

Patrick D. McPherson, Esq.
Duane Morris LLP
1667 K Street, N.W.
Washington, DC 20006-1608
PDMcPherson@duanemorris.com

Via e-mail

Rachel Pernic Waldron, Esq.
Kirkland & Ellis LLP
200 East Randolph Drive
Chicago, IL 60601
rpernicwaldron@kirkland.com

/s/ James D. Heisman .

James D. Heisman, Esq. (#2746)